In The
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRYAN ALAPARET and LAURIE ALAPARET by KAREN ALAPARET, as Guardian ad Litem, and KAREN ALAPARET,

Plaintiffs-Appellants,

vs.

W. D. PHELPS, d/b/a PHELPS PUMP AND EQUIPMENT COMPANY,

Defendant-Appellee.

NO. 22082

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA

BRIEF FOR DEFENDANT-APPELLEE

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I
JURISDICTIONAL STATEMENT

The court is without jurisdiction in this case in that the Nevada Industrial Commission is the sole tribunal to grant relief to plaintiffs. The award made by the Nevada Industrial Commission to the plaintiffs, pursuant to its sole and exclusive jurisdiction under Chapter 616 of Nevada Revised Statutes, is the sole remedy of the plaintiffs. There is no "statement of any pleadings and facts disclosing the basis upon which it is contended that the District Court had jurisdiction and that this court has jurisdiction to review the judgment" appearing in the appellant's brief. (Rule 18b)

There is no reference to "the pleadings necessary to show the existence of jurisdictions, referring to the pages of the record in which they appear" appearing in the appellant's brief. (Rule 18b(3))

II
STATEMENT OF THE CASE

Although there may be an allegation in the complaint that the defendant introduced oxygen, it is not an issue in this case. This position was abandoned by the plaintiffs pursuant to stipulation in the pre-trial order filed in the District Court on May 3, 1967 pursuant to Paragraph III and Paragraph VIII of said pre-trial order which omitted any reference to the admission of oxygen as an issue of fact or law in the case. (Record 256-261) There is no liability as a matter of law. There is no evidence to show that any oxygen was introduced by any employee of the defendant. All of the available witnesses so testified at the depositions. The oxygen line was taken into the shaft by the decedent. The question of liability was before the District Court and was argued. It was stipulated that the pre-trial order would supercede the pleadings. (Record, paragraph VIII, Page 261) There is no disputed facts in this regard.

The plaintiffs admitted and acknowledged that Mr. McNair was a subcontractor. (Paragraphs 4 and 7, Record 86 and 87)

To say that the decedent was a "statutory employee" of the defendant is over-simplification. The statute provides the decedent is *deemed* to be an employee of the defendant. (Emphasis supplied) (N.R.S. 616.115)

The appellants have received and are receiving monthly benefits from the Nevada Industrial Commission, pursuant to the claim they made which the plaintiffs acknowledge and are using as a basis for this lawsuit by relying on N.R.S. 616.560. (8, 9 and 10, Record 63-64 and paragraphs 8, 9 and 10, Record 87) (First sentence of the appellants' statement of the case) The claim was based on the fact that the decedent was an employee of Mr. McNair.

The billing by Mr. McNair was for an uncompleted job and was not a billing for the full amount intended by the contracting parties.

The decedent stated "I know better than that" after he reached the surface.

The well was being drilled in Nevada and the alleged injury occurred in Nevada. (Paragraph 3, Complaint) (Affidavit of Phelps, paragraph 5, 92) (Paragraph 2, Affidavit of Edward Lee Fowler, appellants' appendix 19a)

The decedent was an employee in the course of his employment with Mr. McNair on the day of the accident. (Paragraph 2, 86)

III
SUMMARY OF ARGUMENT

A. FACTS

The defendant was a principal contractor. Mr. McNair, the decedent's employer, was either a subcontractor or an independent contractor of the principal contractor.

B. STATUTES

Compensation for injuries or death is conclusive, compulsory and obligatory. (N.R.S. 616.370)

Civil actions may only be maintained against any person "other than the employer or a person in the same employee." (N.R.S. 616.560)

"Subcontractors and their employees shall be deemed to be employees of the principal contractor." (N.R.S. 616.085)

"Subcontractors shall include independent contractors." (N.R.S. 616.115)

The action is barred. (N.R.S. 616.270)

C. CONCLUSION

The decedent is deemed to be an employee of the principal contractor and the plaintiffs are barred from maintaining a suit against the defendant.

IV

APPELLANTS' ARGUMENT DISTINGUISHED

A. Appellants' "Same Employ" and "Contractor-Under" Statute Theory

The controlling provisions of the Nevada Industrial Insurance Act were amendments to the act which makes Nevada law unique. The common law assertions of the right to a "third party" action are of historical interest only when the applicable Nevada statutes are considered.

Section 71 of Larson, Workman's Compensation, cited by the appellants, refers to rights against strangers, as such, not to contractors on the same job. Section 72, quoted by the appellants, is referred to as four variants by Professor Larson. (Vol. 2, pages 170 and 171) The appellants have selected the second variant but the Nevada courts have already selected the third variant for construction projects which bars recovery for suits against

"(3) the employer, persons in the same employ and all contractors and their employees engaged upon a 'common employment' or upon a 'related purpose'."

The case of *Nevada Industrial Commission v. Bibb*, 78 Nev. 377, 374, P.2d 531 (1962), cited by the appellants, is not a case of "common employment" but only one involving the question of whether the claimant was an employee. There is no issue as to whether the decedent was an employee of Mr. McNair, the subcontractor. (Admited Par. 3, 86 in response to Par. 2, 62) To apply a test of control to determine whether he is also an employee of the principal contractor, as a matter of fact, serves no purpose because th Nevada statute expressly states he is deemed to be an employee of the principal contractor.

The fact that Nevada also has a "contractor-under" statute is a factor which should add to the immunity of the principal contractor. Professor Larson states in this respect as follows:

"Since the general contractor is thereby, in effect, made the employer for the purpose of the compensation statute, it is obvious that he should enjoy the regular immunity of an employer from third-party suit when the facts are such that he could be made liable for compensation; and a great majority of cases have so held.' (2 Larson's Workman's Compensation Law, 175 Sec. 72.31)

Some of the cases on pages 204-207 of the supplement to Volume 2 of Larson's Workman's Compensation which tends to support his quoted statement are as follows:

Accord, Girardi v. Lipset, Inc., 275 F.2d 492 (3d Cir. 1960) Contractor a statutory employer; plaintiff's sole remedy workmen's compensation.
Anderson v. Benson Mfg. Co., 338 S.W. 812 (Mo. 1960). A private employer hired the claimant

through a protective agency to guard his plant. The guard was a statutory employee.

Thompson v. Kroeger, —Mo. ____, 380 S.W. 2d 339 (1964). Plaintiff's employer was a sub-contractor of one of the defendants, who was in turn the sub-contractor of the other defendant, the general contractor. Held: Plaintiff was statutory employee of the general contractor and was barred from bringing an action in tort.

Anderson v. Steurer, —Mo. —, 391 S.W. 2d 839 (1965). Noeller, general contractor on the job in question, hired Steurer to do the lathing and plastering. In turn, Steurer hired Stroup, claimant's immediate employer, to do the lathing work. There was a question whether Stroup was a subcontractor of Steurer or a joint venturere with him. The court held that a tort action against Steurer was barred under either theory by the Workman's Compensation Act.

Thibodaux v. Sun Oil Co., 40 So. 2d 761 (La. App. 1949), aff'd, 218 La. 453, 49 So.2d 852. Statutory Employer Immune.

Maryland Cas. Co. v. Gulf Refining Co., 110 So. 2d 784 (La. App. 1959). The refining company held immune from suit as the statutory employer of the employee of a bulk distributor. The existence of insurance on the contractor is not material in Louisiana. (See Sec. 49.12, n.42 Larson's Workman's Compensation Law)

Best v. J & B Drilling Co., 152 So. 2d 119 (La. Ap. 1963). Repair of drilling-rig compressors held to be part of the "Trade, business or occupation" of the drilling company. Tort action by an employee of the repair company against the drilling company dismissed. (Also cited on page 17 of appellants' opening brief)

Mosely v. Jones, 224 Miss. 725, 80 So.2d 819 (1955) Text quoted in holding that general contractor is immune from suit.
Whittaker v. Douglas, 179 Kan. 64, 292 P2d 688 (1956)

Moore v. Philadelphia Elec. Co., 189 F. Supp. 808 (E. D. Pa. 1960) General Contractor, as statutory employer, immune.

Kelpfer v. Joyce, 197 F. Supp. 676 (D. Pa. 1961) The general contractor was immune from a third-party suit by the subcontractor's employee, even though the general contractor had assigned the entire construction contract to the subcontractor and had removed himself from the project.

Streets v. Sovereign Constr. Co., —Pa.—, 198 A2d 590 (1964). Contractor's hold harmless agreement with the city did not destroy the contractor's immunity as a statutory employer of subcontractor's employee. Subcontractor employee's suit dismissed.

Baldwin Co. v. Manner, 224 Ark. 348, 273 SW2d 28 (1954). Text criticism of such decisions noted, but the court said that it is for the legislature to say who is an employer.

Thomas v. Chambers, Laird v. Chambers, 183F Supp. 764 (D. Colo. 1960). The injured employee, who had elected to receive workman's compensation benefits under insurance carried by the subcontractor could not maintain a tort action against the principal contractor for injuries sustained.

Cf. Hayes v. Delaware Valley Steel Fabricators, Inc., 201 F. Supp. 954 (E.D. Pa. 1962). The Philadelphia Transport Company let a contract to the Delaware Valley Company, which in turn assigned the contract to the Belanger Company, which in turn subcontracted the entire job to the Hughes Company

— whose employee was injured on the job. The employee brought a third-party action against the Philadelphia, Delaware Valley and Belanger companies. The court held that contractual restrictions on Belanger's freedom of control over the job site, which permitted the Philadelphia Company to continue operations, to do some of the work itself, and to inspect the work, did not destroy Belanger's statutory employer immunity as one having "possession and control" of the premises entered by employees of the subcontractor. Summary Judgment for Belanger sustained.

Objection is made to the reference of N.R.S. 616.060, 616.030, and 616.120 cited at the bottom of page 13 of appellants' brief on the grounds that no such question was ever raised before the trial judge on the three occasions the motions for Summary Judgment were argued. The statutes are no more controlling than the Nevada case of *Nevada Industrial Commission v. Bibb*, cited by the appellants, for reasons as follows:

1. The statutes merely provide a criterion to determine whether or not the employer-employee relationship exists — i.e. the relationship between Mr. McNair and the decedent.

2. There is no question but what the employer-employee relationship existed between the decedent and Mr. McNair, the subcontractor, by reason of the admissions previously noted that the appellants have been accepting Nevada Industrial Compensation benefits based upon the claim that the decedent was acting as the employee of Mr. McNair, the subcontractor, at the time of the accident.

3. The statutes are not contradictory to the immunity statute. The decedent was deemed to be the employee of the principal contractor for the purpose of the act (N.R.S. 616.085). In other words, the

latter mentioned section does not make him an employee as such, but it deems the decedent to have been an employee of the principal contractor even though he was not an employee by statutory definition or otherwise.

B. Appellants' Theory That The Rationale Behind The Summary Judgment Was Incomplete

The reference to N.R.S. 616.060 is merely repetitious of the previous theory in which the statute was previously noted. Again, this statute helps to determine whether or not the employee is an employee of a subcontractor in a case such as this case. To argue that "summary judgment was still improperly given because Douglas ..Alaparet could not have been an employee of the defendant" has no bearing on the question because N.R.S. 616.085 states that he is deemed to be an employee. Therefore, whether or not he is an employee of the principal contractor is not a question of fact which can even be considered when the decedent is an employee by statute as a matter of law.

C. Appellants' Theory That Douglas Alaparet's Relation With The Defendant Was A "Casual" Employment

The appellants are arguing facts in *de hors* the record. There is no showing that the parties contemplated any contract which would cost less than $100 in labor costs or that it would take less than ten (10) working days. The reasoning is based upon the fallacy that because the job was commenced and was then terminated by reason of the accident, the total price paid for a partial job would be the criterion to determine whether or not a person is a "casual" employee. Here again, the reasoning is based upon the repetitious supposition that it must be shown or proven that the decedent was, in fact, an employee of the principal contractor rather than an employee as a matter of law. Again, the test is not

whether or not the decedent was an employee of the principal contractor but whether or not he would be deemed to be an employee of the principal contractor. The *Benbow* case, cited by the appellants, is a case involving the question of whether or not there is compensation liability. There is no compensation liability question in this case by reason of the fact that the appellants have been fully compensated by the Nevada Industrial Commission. The appellants' theory that Douglas Alaparet's relationship with the defendant was not in the course of the trade, business, profession or occupation of the latter is of no consequence because it is a statutory relationship. We take issue with the appellants to the effect that they allege that we argued that "independent contractor" equals "subcontractor." The defendant's argument was to the effect that subcontractors, and their employees were deemed to be employees of the principal contractor. The case of *Best v. J & B Drilling Co.* cited by the appellants is a case where Louisiana is in accord with Nevada and the position of the appellee. The affidavit of Lloyd Ralph Lemon (22a, 23a, and 24a of appellants' appendix) sets forth the particular provisions of the contract which provides, among other things, that the pipe be to a depth of 100 feet and "joined with continuous welds" and makes it clear that the purpose of the welding by the decedent was done pursuant to the specifications and requirements of the principal contractor's contract and in fulfilment of the contract. The fulfilling of the contract was the business of the principal contractor. The contractor required that the principal contractor do all necessary repair work. The casing had to be welded in order to carry on the business of drilling the well. Because of the fact that the well casing could not be repaired, the principal contractor did not continue with the particular well and had to abandon it for another site. (Affidavit of Edward Lee Fowler, appellants' appendix 20a, 21a, 22a) The casing was a part of the well. This case should be distinguished from the *Stransbury v. Magnolia Petroleum Co.* case, as cited by the appellants, by reason of

the fact that that case involved a repair to an oil company's derrick rather than to a part of a well. The legal principle that "unless the repair work is of the type that would normally be carried on by the contractee's employees, there can be no employee-employer relationship between the contractee and the injured employee of the contractor doing the work, whether that contractor be considered an independent or a sub" is also a test to determine whether or not the employee is, in fact, an employee and has no bearing if a state statute states that he is deemed to be an employee as previously stated in this brief.

D. The Theory That The Defendant Is On The Horns Of A Dilemma

Here again, the appellants have still not accepted the fact that the decedent is an employee of the principal contractor by operation of law — i.e. that he is deemed to be an employee of the principal contractor. Inasmuch as he is deemed to be an employee, the fact that he may or may not be an employee, or that he may be a"casual" employee, as to the principal contractor, makes no difference. To state that the repair of casing fractures is beyond and distinct from the business of well drilling is to take unwarranted liberties with the facts. The contract, pursuant to its specifications, required a certain type of weld (Affidavit of Lloyd Ralph Lemon, appellants' appendix 22a and 23a). The specifications required that the principal contractor do all repair work needed to be done to the well whether it was repair work to the casing or to some other part of the well. The Nevada cases of *Simon Service* and *Titanium Metals,* cited by the appellants, support the proposition that an owner can, in fact, be a principal contractor. It doesn't follow that a person who is not an owner cannot become a principal contractor.

E. Appellants' Theory That The Appellants Are Only Barred When There Is Someone Acting As A "Subcontractor" To A Principal Contractor"

The appellants are again taking an unwarranted license with the true meaning and intent of the statutes. Subcontractors and independent contractors are treated the same under the act. Although the appellants might urge the court to adopt a different rule, the court is bound by the construction of the statute applied by the courts of the state of Nevada. The case of *Simon Service Incorporated v. Mitchell,* 73 Nev. 9 307 P2d 110 (1957) at page 113 of the Pacific Reporter citation provides as follows:

> "(3) The very purpose of N.R.S. 616.085 is, at least in part, to protect the employees of subcontractors against the possible irresponsibility of their immediate employers by making the principal contractor or principal employer having general control of the construction liable as if he had directly employed every workman on the job. *Bello v. Notkins,* 104 Conn. 34, 124A. 831.
>
> Bearing in mind that the term 'principal co .ractor' is not defined in the act, let us put into the actual juxtaposition in which they occur, in the original act, Stats. 1947, p. 569, Sections 21 and 22.
>
> 'Sec. 21. The term 'subcontractors' shall include independent contractors.
>
> Sec. 22. Subcontractors and their employees shall, for the purpose of this act, be deemed to be employees of the principal contractor.'
>
> Appellant, although it employed no general contractor for the entire construction, did employ, as a separate contractor, the plumbing company to install the sheet metal work, as well as employing other separate contractors for other phases of the

work. Whether these separate and individual contractors are denominated subcontractors or independent contractors would not affect their direct relationships with appellant."

The case of *James E. Walsh v. McDonald Engineering Company of California,* Case No. A 10557 In the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, is another Nevada case cited before the Federal Trial Judge. In the *Walsh* case the plaintiff was an employee of one of the subcontractors and he brought an action for injuries against another subcontractor for injuries sustained. The defendant was granted a Summary Judgment against the plaintiff on the grounds that a subcontractor and its employees are deemed to be employees of the principal contractor, and inasmuch as subcontractors would have the same status as employees, and the action could not be brought against a person in the same employ, the action of the plaintiff could not be maintained. The Summary Judgment was granted in 1966. No appeal was taken therefrom.

V
ARGUMENT

A. Nevada Has Again Reaffirmed A Rule Comparable To The "Common Employment" Doctrine On Construction Projects

The equities of the Nevada statute are apparent. The principal contractor is compelled to provide industrial coverage for his employees. In turn, if he subcontracts a portion of the work, or he hires an independent contractor to do the work, the cost of the contracted work is increased because the subcontractor or independent contractor is compelled to bid a higher price by reason of his expenses for industrial compensation premiums paid for and on behalf of his employees. The utilmate cost is passed on to the principal contractor. The employers pay the premiums so that they may

have the protection of the act. Therefore, it is clear that the intent of the legislature of the State of Nevada was to provide the protection for a contractor who will contract with another contractor to do a portion of the work. This encourages specialization in Nevada just as it encouraged specialization in this case. Consequently, the public receives the benefit of better products, better services, and better installations.

Also, all of the contractors on the job receive the protection which they deserve by reason of the payment of premiums.

The applicable portions of the statutes are set forth in the summary to this argument and they provide as follows:

1. That all actions by an employee against an employer providing industrial compensation and its employees are barred by the act. (N.R.S. 616.270)

2. All subcontractors and their employees are deemed to be employees of the principal contractor. (N.R.S. 616.085)

3. Subcontractors include independent contractors. (N.R.S. 616.115)

4. The rights and remedies are exclusive. (N.R.S. 616.370)

It is axiomatic that the Federal courts are bound to follow the interpretation of the Nevada Courts when construing its statutes.

The Nevada Supreme Court has rendered a decision since this appeal was commenced. In the most recent Nevada case of *Tab Construction Company v. The Eighth Judicial District Court*, 432 P.2d 90 (1967), a writ of prohibition was granted by the Nevada Supreme Court in Case No. 5285 after a motion for Summary Judgment was denied on the ground that the Nevada Industrial Insurance Act

provides the full and exclusive remedy. Because the case is so recent and similar the appellee quotes most of the case as follows:

> "By the Court, Zenoff, J.:
>
> Petitioner seeks a writ of prohibition to prevent the respondent court from proceeding with a civil action on the ground that the Nevada Industrial Insurance Act provides full and exclusive remedy, and thus, the respondent is without jurisdiction. Respondent does not dispute that Nevada law prohibits this civil suit, but urges that the lower court has jurisdiction to proceed because the action is based on Arizona law, that Arizona law is applicable and does not prohibit the suit.
>
> On April 26, 1967, the petitioner, Tab Construction Company, a Nevada corporation, 'was the general contractor engaged in construction on the Bonanza Underpass in Las Vegas, Nevada. The Horizontal Boring and Tunnel, Inc., an Arizona corporation, was a subcontractor performing work for the petitioner on the Bonanza Underpass. Christopher J. Giacona, a resident of Arizona, and an employee of Horizontal Boring and Tunnel, Inc., while acting in the course and scope of his employment was injured, and incurred damages therefrom. He brought an action against Tab Construction alleging that negligent conduct on the part of certain employees of Tab Construction while acting in the course and scope of their employment caused the injury to him. Giacona also named as codefendants certain individual employees of the petitioner, Tab Construction . . .
>
> . . . Arizona allows a common-law action against the general contractor in a workmen's compensation case. This, of course, is contrary to Nevada's statu-

tory workmen's compensation scheme which prohibits common-law relief in this situation.

1. The Nevada Industrial Insurance Act provides that subcontractors and their employees shall be deemed employees of the principal contractor. N.R.S. 616.085; *Simon Service V. Mitchell,* 73 Nev. 9, 307 P.2d 110, 1957; *Titanium Metals v. District Court,* 76 Nev. 72, 349 P.2d 444 (1960); The petitioner therefore was subject to the provisions of the N.I.I.A., as was the non-objecting plaintiff employee, Giacona. N.R.S. 616.285 and 616.295.

The N.I.I.A. provides that an employer, who accepts the terms of this act which provides compensation for employees, is relieved from further liability. N.R.S. 616.270. Only if the employer fails to provide and secure compensation under this act is the employee allowed to bring an action at law. N.R.S. 616.375.

Under N.R.S. 616.370 the rights and remedies under the act are exclusive and conclusive on both the employer and the employee. Thus, under Nevada law the exclusive remedy in the sense that no other common-law or statutory remedy under local law may be sought by the employee against his employer. *Simon Service v. Mitchell,* supra; *Titanium Metas v. District Court,* supra; *Nevada Ind. Comm'n v. Underwood,* 79 Nev. 496, 387 P.2d 63 (1963).

We observe that the State of Nevada has a legitimate constitutional interest in the application of its own domestic law and policy to a work injury occuring within its borders. *Pacific Employers Inc. Co. v. Industrial Acc. Comm'n,* 306 U.S. 493 (1939); *Carroll v. Lanza,* 349 U.S. 408 (1955).

The interest of Nevada in the instant case does not derive solely from the occurrence of the injury

within its borders. Significant is the fact that it is the state of forum. If the forum state is concerned, it will not favor the application of a rule repugnant to its own policies, and the law of the forum will presumptively apply, unless it becomes clear that non-forum incidents are of greater significance. *Alaska Packers Ass'n v. Industrial Acc. Comm'n,* 294 U.S. 532 (1935); *Wilcox v. Wilcox,* 133 N.W.2d 408 (Wis. 1965).

There are no compelling reasons to displace the domestic law and policies of Nevada. Nevada is the forum state, the place of residence of the general contractor, the place of the work injury, the place where employment exists and is carried out, the place where the general contractor's business is localized, and the place the employees work. All of Nevada's relevant policies of workmen's compensation are vitally involved. We therefore must pay heed and give effect to this interest.

Under the confines of these facts we grant the petition for a writ of prohibition.

Thompson, C. J. and COLLINS, J., Concur"

VI
CONCLUSION

The Nevada Act, by amendment, has adopted the "common employment" doctrine as to construction projects. This doctrine has been followed by the Massachusetts courts. The case of *Bresnahan v. Barre,* 286 Mass. 593, 597, 190 N.E. 815 (1934), is quoted in Larson's Workman's Compensation Law 179 in section 72-32 as follows:

"One purpose of the workman's compensation act was to sweep within its provisions all claims for compensation flowing from personal injuries arising

out of and in the course of employment by a common employer insured under the act, and not to preserve for the benefit of the insurer or of the insurer and those injured liabilities between those engaged in the common employment which but for the act would exist at common law. That is the broad ground underlying the decisions already cited."

It is obvious that the plaintiffs have no remedy against the appellee and that he should not have been subjected to this law suit. The judgment should be sustained. Nevada's policy should be preserved.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United State Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing briefs is in full compliance with those rules.

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STATE OF NEVADA }
COUNTY OF CLARK } ss:

On _____, before, the undersigned, a Notary Public in and for said County and State, personally appeared ELWIN C. LEAVITT, known to me to be the person described in and who executed the foregoing brief and certificate, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal.

_____

Notary Public in and for said
County and State

PROOF OF SERVICE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

ELWIN C. LEAVITT, being first duly sworn, says

that on the _____ day of _____, 1967, he served three copies of the Brief for Defendant-Appellee on Wisti, Jaaskelainen & Shrock, 101 Quincy Street, Hancock, Michigan, by depositing the same in a government mail receptacle at Las Vegas, Nevada, enclosed in a sealed envelope plainly addressed to such persons at the said address, with postage thereon fully prepaid.

ELWIN C. LEAVITT
Attorney for Defendant-Appellee

229 Las Vegas Boulevard South
Las Vegas, Nevada 89101

Subscribed and sworn to before me

this _____ day of _____, 1967.

Notary Public in and for said
County and State